

[a] plaintiff's motion under Rule 41(a)(2) for dismissal without prejudice "should not be denied absent substantial prejudice to the defendant." Prejudice of a sort to weigh in favor of denying a motion to voluntarily dismiss has been described as "plain legal prejudice." . . . Plain legal prejudice is shown when actual legal rights are threatened or when monetary or other burdens appear to be extreme or unreasonable. Additional factors commonly assessed when considering a Rule 41(a)(2) motion include: (1) the extent to which litigation has progressed, including the defendant's effort and expenses to date, (2) the plaintiff's diligence in prosecuting the action or in bringing the motion, (3) the duplicative expense of relitigation, and (4) the adequacy of plaintiff's explanation for the need to dismiss.

Nat'l Specialty Ins. Co. v. AIG Domestic Claims, No. 3:09-1183-JFA, 2010 WL 412604, at *2 (D.S.C. Jan. 28, 2010) (citations omitted).

Here, the Court authorized service of process on Brunson on January 17, 2013. [Doc. 20.] Brunson was served on February 7, 2013 [Doc. 28] and filed an answer on February 26, 2013 [Doc. 29]. Thus, dispositive motions are due from Brunson by April 12, 2013. [See Doc. 20 at 2 ("[A]ll dispositive motions from Defendants must be filed no later than forty-five (45) days after the answer on behalf of that particular Defendant has been filed.").] Therefore, while this litigation has imposed some burden on Brunson, it does not appear that Brunson would be substantially prejudiced by dismissal. Accordingly, the Court recommends Plaintiff's motion to dismiss be granted and that the Complaint be dismissed as to Brunson.

CONCLUSION

Wherefore, based upon the foregoing, the Court recommends Plaintiff's motion to dismiss Defendant Captain Brunson without prejudice be GRANTED.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

April 10, 2013
Greenville, South Carolina